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09/873,509	06/04/2001	Kazuo Maeda	VREX-0020USAONOO	4689

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EXAMINER

CHANG, AUDREY Y

ART UNIT	PAPER NUMBER
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2872

DATE MAILED: 05/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/873,509

Applicant(s)

MAEDA ET AL.

Examiner

Audrey Y. Chang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 8-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 22 January 2003 is: a) ☐ approved b) ☒ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Remark*

- This Office Action is in response to applicant's amendment filed on January 22, 2003, which has been entered as paper number 6.
- By this amendment, the applicant has canceled claims 1-6 and has newly added claims 8-27.
- The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not). *Misnumbered claim 27 has been renumbered 26.* The applicant is respectfully reminded there is no claim 26 submitted.
- Claims 10-26 remain pending in this application.
- The priority document, as identified in previous Office Action is still *not* in the file.
- The *objection* to the oath/declaration set forth in the previous Office Action *still holds*.
- The objection to the drawings set forth in the previous Office Action still holds. The proposed drawing correction filed on January 22, 2003 has been *disapproved* because it is not in the form of a pen-and-ink sketch showing changes in *red ink* or with the changes otherwise highlighted. See MPEP § 608.02(v).
- The objection to the oath/declaration set forth in the previous Office Action *still holds*.
- The rejections to claims 1-7 set forth in the previous Office Action are withdrawn due to the cancellation of claims 1-7 set forth in the amendment.

### *Response to Amendment*

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1. The amendment filed *January 22, 2003* is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the newly added claim 8 recites the term “3D polarizer” and newly added claim 26 recites the resist members being square bodies. The specification fails to give support for a 3D polarizer and does not give the support for the resist members to be of square bodies.

Applicant is required to cancel the new matter in the reply to this Office Action.

*Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. **Claims 8-26 are rejected under 35 U.S.C. 112, first paragraph**, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The reasons for rejection based on newly added matters are set forth in the paragraph above.

4. **Claims 8-26 are rejected under 35 U.S.C. 112, first paragraph**, as containing subject matter which was not described in the specification in such a way as to **enable** one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

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The specification fails to teach what is considered to be a “3D polarizer” and how could a polarizer be made “3D”. A polarizer can filter or select certain polarization state of the incident light but it **cannot** create any three dimensional effect.

The specification also fails to teach how could the laminated polarizing film be a *polarizing* film by simply having PVA film and TAC or CAB film. It is understood in the art that none of these films will *naturally* have any polarization property. Essential steps forming the PVA film to have polarization effect are missing.

The specification also fails to teach how could the laminated polarizing film is a half wave plate, as stated in claim 20. The applicant is respectfully reminded that a polarizer is **not** a wave plate, (please check standard optic textbook). *The specification fails to teach how could a polarizing film become a half wave plate.* A polarizer as understood in the art has the function to select out a single polarization state of the incident *nature* light. A half wave plate, which is a retarder, has the effect of *rotating* a polarization state of a *polarized* light. The two elements are *different* optical elements and have *different* optical functions. Furthermore, the applicant fails to teach how could a half wave plate capable of being used with a 3D display to create 3D viewing. The retarder has to be patterned and be working with a polarizer, (as shown in Figure 14e of cited Faris reference (PN. 6,359,664)) in order to provided micro-polarizer pattern to allow selectively displaying left eye and right eye image respectfully to create stereoscopic viewing.

The specification also does not teach how could the polarizing film *not* being birefringent is capable of providing retardation phase difference (i.e. as a wave plate) to the light.

The specification also fails to teach how could a phase shift of 180 degree be achieved in the *polarizer*, as claimed in claim 24. The phase shift is a result of retarder not a result of polarizer. Polarization is referred to the *vibration* of the electric field of the light, it cannot give phase shift. The applicant is confused with the idea of polarization and wave plate retardation.

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The applicant is respectfully reminded that the specification and claims fail to teach a polarizer that is capable of being used in a 3D image display to enable 3D image viewing, if such limitation is intended here. In order to create 3D image viewing, the essential requirement of the polarizer is to have patterned and alternatively arranged polarization regions with orthogonal polarization states, respectively, in accordance to the alternatively arranged left and right eye images.

**Clarifications are required.**

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. **Claims 10-26 are rejected under 35 U.S.C. 112, second paragraph**, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase “3D polarizer” recited in claim 8 is confusing and indefinite since it is not clear what is considered to be the “3D” function here.

The phrases “a transparent support”, “an adhesive agent”, “resist members” and “a protective member” recited in claim 22 are confusing and indefinite since it is not clear how do they each relate to the transparent support, the adhesive agent, the resist members and the protective member recited in their base claim (8).

The phrase “appropriate members” recited in claims 13, 15, 16 and 22 is confusing and indefinite since it is not clear what is considered to be “*appropriate*” here. The term “appropriate” fails to define a definite metes and bound for the claims. It is not clear the member is considered to be “appropriate” with respect to what. The above-mentioned phrase recited in claims 15 and 16 further lacks an antecedent basis from its based claim.

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The phrase “right-eye image display parts” and the phrase “left-eye image display parts” recited in the claims are confusing since it is not clear if they are referred to the *images* themselves or not. If not what is considered to be “image display *part*”. Furthermore, it is not clear how could the “resist” to have right and left image display *part*. It is understood in the art that left and right image distinction is provided by the patterned polarizer not by the resist. The resist has *no optical effect* what so ever to the device. Clarifications are required.

The phrase “appropriate members” recited in claim 22 is confusing and indefinite since it is not clear how does it relate to other elements in the claim to define the structure and the limitations of the claim clear. The phrase “comprising comprise” recited in claim 22 is incorrect.

The claims are generally narrative and indefinite, failing to conform to current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. The applicant is respectfully reminded to clear out **ALL** of the discrepancies of the claims to make the claims in comply with the requirements of 35 USC 112, first and second paragraphs.

*Claim Rejections - 35 USC § 103*

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 8-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the patent issued to Faris (PN. 6,359,664) in view of the patent issued to Okamoto (PN. 6,147,738).

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Faris teaches a display system for visually displaying a *polarized spatially multiplexed image* (SMI) (48 of Figure 15b) of a *3D object, having left eye image and right eye image mixed within*, for use in stereoscopic viewing, (please see Figure 15b). The stereoscopic viewing is enabled by having a *micropolarizer* (49) having mixed regions of orthogonally polarization states (P1 and P2) that are aligned with the mixed left and right eye image respectively such that the right eye and left eye image are coded with orthogonal polarization states (P1 and P2), (the micropolarizer therefore includes the left eye and right eye image display parts), respectively and then with the help of a spectacle (9) the left and right eye images could be viewed by left and right eye respectively of an observer. Faris teaches that the *micropolarizer is manufactured by laminating a PVA film* (51, Figure 12a) *with a CAB or TAC film* (52) that together serve as the *laminated polarizing film*, and disposing a *photoresist film* (53) at specific locations (please see Figure 12c). The combination is then bleached in a hot humid atmosphere, which implicitly includes *hot water* and *drying* step afterwards, so that the areas that are not covered by the photoresist is exposed to loss the polarizability, (please see Figure 12h, column 11, lines 61-67). The micropolarizer (49) having alternative regions or patterned regions of polarization states is formed as shown in Figures 12g, 12k and 16a and 16b. The micropolarizer is then *superimposed* or *bonded* with the *spatially multiplexed image* (SMI) that could be provided by either a photographic plate or known display device, (please see column 7), which serves as the *display member*.

This reference has met all the limitations of the claims. Faris teaches that the micropolarizer and the SMI may be placed on a display medium (76, Figure 15b), which serves as the *transparent support member* however it does not teach explicitly to include protective layer and adhesive layer. *Okamoto* in the same field of endeavor teaches a polarizer (18 in Figure 1) utilized in a liquid crystal display device wherein the polarizer layer (19, Figure 3) is interposed between a pair of TAC film (20 and 21) and is adhered via an *adhesive layer* (24) to a *transparent glass substrate* (9). The polarizer is also protected by a *protective film* (23), (please see Figures 1 and 3). It would then have been obvious to one having



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ordinary skill in the art to modify the micropolarizer (49) of Faris to make it adhered to a glass substrate via an adhesive layer and to be covered with a protective layer for the benefit of easy adoption of the micropolarizer to the display device or display member for the stereoscopic viewing and for the benefit of protecting it from foreign dusts therefore enhancing the viewing quality. With regard to claims 15, the protective film is inherently without birefringent property so that it does not interfere with the polarization property of the polarizer.

These references also do not teach that the protective film is attached to the resist members. However to attach the protective film to the resist members or to the TAC film as shown by the teachings of Okamoto would not change the function of the polarizer and since the specification fails to teach the criticality of having such arrangement would overcome any problem in the prior art such modification is considered to be obvious matters of design choice to one skilled in the art for the benefit of providing alternative arrangement for the polarizer. Faris teaches that the photoresist members has the identical function as the resist in the instant application for covering the PVA film and forming a pattern of the covering on the PVA film before the step of immersing it in hot water to form patterned polarization and non-polarization regions, (please see Figures 12a-12h). Faris teaches an extra step to remove the photoresist after forming the micropolarizer. It would however have been obvious to one skilled in the art to skip such stripping step to allow the photoresist layer remained on the polarizing film for the benefit of reducing manufacturing cost. It is implicitly true that the micropolarizer functions the same with or without the photoresist members present since the *photoresist members do not have any polarizing effect or any optical effect and will not provide phase shift to provide retardation effect.*

With regard to claim 9, Faris teaches that the polarizer formed can have linear polarization state, (please see column 5, lines 20-21).

With regard to claims 13, 25 and 26, Faris teaches that the photoresist members form strip or square forms with repeated filled (with) and unfilled (without) regions of the photoresist, (please see

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Figure 12h). Faris also teaches that the size of photoresist members determines the size of polarization regions of the micropolarizer, which should be corresponding to the pixel size of the display. The pixel size is about 0.1 mm which is about 100  $\mu\text{m}$ , (please see column 7, line 60). As judging from Figures 16a and 16b, the pitch of the regions should also be of the size of the pixel. Although it does not specifically teaches it to be 160 $\mu\text{m}$ , however since *the idea is* to have the polarization regions be corresponding to the image size, as taught by Faris, to modify the actual size of the polarization regions and the photoresist members for the purpose of matching the pixel size or image size of the display is considered to be obvious matters of design choice since it has been held when the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

With regard to claims 13, 15, 16 and 22, these references do not teach to include "an appropriate members" for filling between the resist members at the specific locations. However, the specification fails to teach the criticality of having this arrangement would overcome any problem in the prior art. The appropriate member, which is not defined by the specification and claims (for reasons stated in paragraphs above for 35 USC 112, second paragraph rejection), and does not seem to have any optical function in this arrangement. It is obvious to one skilled in the art then that whether to provide such member or not will not effect the optical function of the polarizer device. Such modification therefore is considered to be an obvious matters of design choice to one skilled in the art for perhaps the reasons to add protection to the polarizer film as also demonstrated by the teachings of Okamoto. The claimed materials are commonly known materials in the art as layer materials.

With regard to feature concerning the drawn PVA film, Faris teaches that the PVA film is stretched to obtain polarization property. Faris teaches that the PVA film is of 10-20 micron thick but it does not teach explicitly that it is of 38 micron. However the specification fails to teach the criticality of having this particular thickness will overcome any problem in the prior art and the micropolarizer

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functions the same as the instant application, such modification is therefore considered to be obvious matters of design choice for the benefit of providing different arrangement for the film.

With regard to claim 18, Faris teaches that the TAC or CAB film is of a thickness of 125  $\mu\text{m}$ , which is essentially the same as 126  $\mu\text{m}$ .

With regard to claim 21, Faris teaches the bleaching process for the PVA film to depolarize the uncovered regions is done by immersing the film in hot water based bleacher, however this reference does not teach explicitly that the immersing process is for 30 seconds at a temperature of 80 degrees Celsius. However since Faris is capable of forming the micropolarizer that functions the same as the instant application the process is therefore either implicitly included or obvious modification to one skilled in the art. Since the specification fails to teach the criticality of having this particular process would overcome any problem in the prior art, even if this process is not the same as in the prior art reference such modification would have been an obvious modification to one skilled in the art for the benefit of providing alternating way for forming the micropolarizer.

With regard to claims 20 and 24, Faris in a different embodiment, teaches that the PVA film may be formed to have patterned  $\pi$  phase regions (67 in Figure 13e or 73, Figure 14e) such that the patterned film form a half wave retarder, (please see Figures 13a-13e). This means the patterned regions (67 or 73) impart a phase difference of 180 degree to the light passes them as compared to the light passed the regions without the patterned film. In this case the PVA film is not a polarizer.

### *Double Patenting*

9. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefore ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

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A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

10. Claims 8-10 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 10-12 of copending *Application No. 09/874,415*. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 11-12, 14-15, and 17-26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13, 15, and 17-26 of copending *Application No. 09/874,415*. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both recite a method for manufacturing a 3D image display body including the step of forming a laminated phase difference film by laminating a PAV film with a CAB or TAC film, the step of disposing resist members at specific locations, the step of providing protective film and the step of superposing it on a display member.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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Claims 8-26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of copending *Application No. 09/873,690*.

Although the conflicting claims are not identical, they are not patentably distinct from each other because they both recite a method for manufacturing a 3D image display body including the step of forming a laminated phase difference film by laminating a PAV film with a CAB or TAC film, the step of disposing resist members at specific locations, the step of providing protective film and the step of superposing it on a display member.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### *Response to Arguments*

The newly submitted claims have been fully considered and they are rejected for the reasons stated above.

The applicant is respectfully noted that a “phase difference film” is **not** a linear polarizer. The cited patent (PN. 5,327,285) incorporated as reference *never* teaches such. The applicant seems to be confused with the notion of “polarization” and the “phase retardation” effect. The applicant is respectfully advised to consult with standard optics textbook for distinctions between the two effects.

#### *Conclusion*

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing

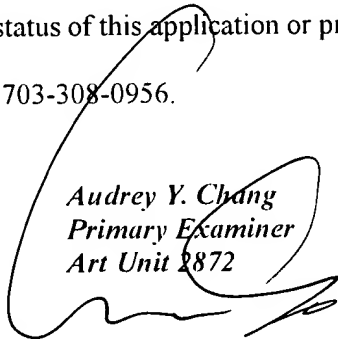
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date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Audrey Y. Chang whose telephone number is 703-305-6208. The examiner can normally be reached on Monday-Friday (8:00-4:30), alternative Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cassandra Spyrou can be reached on 703-308-1637. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9318 for regular communications and 703-872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.



Audrey Y. Chang  
Primary Examiner  
Art Unit 2872

A. Chang, Ph.D.  
May 8, 2003